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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,045	04/18/2001	Donald J. Mischo	11501.012	2957

25005 7590 01/28/2011

Intellectual Property Dept.
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EXAMINER	
RODRIGUEZ, JOSEPH C	

ART UNIT	PAPER NUMBER
3653	

NOTIFICATION DATE	DELIVERY MODE
01/28/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket-ip@dewittross.com

Office Action Summary	Application No.	Applicant(s)	
	09/838,045	MISCHO, DONALD J.	
	Examiner	Art Unit	
	JOSEPH C. RODRIGUEZ	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24,26,27,30-34,45 and 48-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24,26,27,30-34,45 and 48-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Final Rejection

Applicant's arguments filed 8/26/2010 have been fully considered but they are not persuasive for reasons detailed below.

The 35 U.S.C. 112 rejections are maintained or modified as follows:

These rejections have been withdrawn.

The prior art rejections are maintained or modified as follows:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 24, 26, 30-34, 45 and 48-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. (US 5,405,440) in view of Grzybowski (US 5,236,497), and legal precedent.

Green teaches a method for processing used asphalt comprising:

(A) establishing a target asphalt-aggregate ratio (col. 3, ln. 44-col. 4, ln. 27);

(B) shredding the used asphalt material to a first maximum size (col. 3, ln. 3- 55);

(C) separating the shredded material into (i) fine material having an asphalt-aggregate composition comprising both asphalt pieces and aggregate in an asphalt-

aggregate ratio and (ii) coarse material (Id. teaching that oversized asphalt waste is discarded while fine material of 0.5-1.5 inches is further processed); and

(D) controlling the asphalt-aggregate ratio in the fine material to obtain said target asphalt-aggregate ratio, wherein the target asphalt-aggregate ratio is established independently of said-the controlling of the asphalt-aggregate ratio in the fine material~ and wherein controlling the asphalt-aggregate ratio in the fine material includes the steps of (i) checking the asphalt- aggregate ratio in the fine material resulting from the separating step, and (ii) based on the checking step adjusting the ratio of fine material to coarse material which results during the separating step to bring the asphalt-aggregate ratio of the fine material towards the target asphalt-aggregate (col. 3, ln. 40+ teaching testing for ratio and that ratio may be controlled by adjusting crusher or adding asphalt or aggregate; Fig. 1 with crusher 9 regarded as separation station with adjustable separation rate), wherein the target asphalt-aggregate ratio can be regarded as established independently of the asphalt-aggregate ratio in the asphalt waste material.

Green as set forth above teaches all that is claimed except for expressly teaching applying said method steps to used asphalt shingle material having an aggregate layer, wherein the target asphalt-aggregate ratio of the fine material is approximately 30% to 70% by volume, or approximately 50-50 by weight, or that the maximum size is adjusted to between approximately 1 inches to 4 inches. Grzybowski, however, expressly teaches that asphalt roofing waste provides an excellent source of material for the process of generating asphalt paving composition discussed by Green (Abstract

teaching that recycling roofing waste provides environmental benefits) and also teaches a wide variety of target ratios involving the roofing waste as well as specific crushed sizes (col. 6, ln. 27+). It would thus be obvious to one with ordinary skill in the art to modify the base reference with these prior art teachings to arrive at the claimed invention. The rationale for this obviousness determination can be found in the prior art itself as cited above. Further, the claimed features of specific ratios and sizes can be regarded as a mere design choice controlled by the design incentives and/or economic considerations involved in this type of subject matter. This is especially applicable in the aggregate recycling arts as economic considerations and desired aggregate blends often drive the specific ratios and crushing sizes of the materials being processed as evidenced by Green and Grzybowski. Moreover, these variations are predictable to one of ordinary skill in the art. See MPEP 2143. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Green for the reasons set forth above.

Further, it is again noted that Examiner took Official Notice that the mere choice of a ratio by weight or by volume is well known in the art and that Applicant failed to properly traverse this finding, thus this feature can be regarded as admitted prior art.

Claims 24, 26, 27, 30-34, 45 and 48-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. (US 5,405,440) in view of Grzybowski (US 5,236,497) and legal precedent as applied to the claims above, and further in view of Miller et al. (“Miller”)(US 4,726,530) and Omann (US 5,451,003).

Green et al. as set forth above teach all that is claimed except for expressly teaching that said separating station includes a screen element said adjusting step includes one of: providing the screen element with variable-sized openings through which the asphalt-aggregate composition falls, and adjusting the size of said openings, and providing the screen element with first and second interchangeable screens having different size openings, and selecting one of said first and second screens for use in the screen during said separating step. Further, the step of adjusting a maximum cut size may not be regarded as taught above. Omann, however, teaches a method of processing waste shingles for use in roadways where the waste is processed to a specific size (Abstract; col. 4, ln. 44-61; col. 6, ln. 27-57) and then separated with a screen (68, 132; col. 6, ln. 58-63), wherein the screen sizes may be changed (col. 6, ln. 35-63). Miller further teaches multiple types of shredders of various sizes (Fig. 1 see 10, 30, 70, 100, 110) and, moreover, teaches that the final product size depends on its end use (col. 11, ln. 49 et seq.). Based on Miller's teachings, it would be obvious to one with ordinary skill in the art to adjust the shredder sizes towards obtaining a specific target-ratio. The rationale for this obviousness determination can be found in the prior art itself as Miller teaches it is known to select a shredder size based on the desired end product, wherein market requirements for materials of specific strengths (i.e., ratios) and sizes provide further rationale for selecting specific shredders sizes. Further, the modification to arrive at the claimed invention would merely involve the substitution/addition of well-known elements (i.e., substitution of specific shredder or screen size) with no change in their respective functions. Moreover, the use of prior art

elements according to their known functions is a predictable variation that would yield predictable results, and thus cannot be regarded as a non-obvious modification when the modification is already commonly implemented in the prior art. Further, the prior art discussed and cited demonstrates the level of sophistication of one with ordinary skill in the art and that these modifications would be well within this skill level. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Green et al. for the reasons set forth above.

Response to Arguments

Applicant's arguments that the prior art fails to teach the claimed features are moot in view of the reformulated prior art rejections set forth above. Consequently, the claims stand rejected.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-3692** (M-F, 9 am – 6 pm, EST). The Supervisory Examiner is Stefanos Karmis, **571-272-6744**. The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-3692.**

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PAIR system, see **http://pair-direct.uspto.gov**

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

/Joseph C Rodriguez/
Primary Examiner, Art Unit 3653
Jcr

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January 24, 2011